THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 7608 of 2006

Date: 03.09.2007

Between:

Papithoti Prakasha Rao.

..... PETITIONER

AND

The Directorate General of Artillery,
(Arty-3B), General Staff Branch,
Army Head Quarters, DHQ PO,
New Delhi and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 7608 of 2006

Order:

Questioning the proceedings, dated 24.01.2006, of the 2nd respondent, rejecting the claim of the petitioner for reinstatement or in the alternative to sanction the pensionary benefits, the present writ petition is filed.

The facts of the case, in brief, are as follows. The petitioner joined in the Army on 05.11.1980. Later on, on 04.11.1985, he was discharged from service on the ground that he is an inefficient soldier under item III (v) of the table annexed to the Rule 13 (3) of Army Rules, 1954. Thereafter, the petitioner has not questioned the said discharge order, and after lapse of nearly 20 years i.e., on 13.10.2005 he made a representation to the respondents seeking to reinstate him or in the alternative to sanction the pensionary benefits to him. The respondents, after considering the said request of the petitioner, by impugned order dated 24.01.2006, rejected the case of the petitioner stating that since he has not completed minimum 15 years of service, which is mandatory to earn service pension, and since he has completed only 5 years of service as on the date of his discharge, he is not entitled for any service pension. It is further stated that since the petitioner has been discharged from service on the ground that he is an inefficient soldier under item III (v) of table annexed to Rule 13 (3) of Army Rules 1954, he cannot be reinstated into service. Aggrieved by the said rejection order, the petitioner filed the present writ petition.

It is contended by the learned counsel for the petitioner that the

respondents, without issuing any show cause notice and without providing any opportunity to the petitioner, discharged him from service in violation of the principles of natural justice, and therefore, the petitioner is entitled to reinstatement or in the alternative to the pensionary benefits.

The respondents filed a detailed counter affidavit. Reiterating the counter averments, Sri A. Rajashekar Reddy, learned Assistant Solicitor General for the respondents submits that before passing the discharge orders, a show cause notice dated 27.10.1985 was issued to the petitioner calling upon him to explain as to why his services should not be terminated as he had failed to achieve permanent qualification of Army Certificate of Education Class-III within the period of five years from the date of his enrolment, and after taking into consideration the explanation submitted by the petitioner, he was discharged from service with effect from 04.11.1985 being an inefficient soldier under item III(v) of table annexed to Rule 13 (3) of Army Rules, 1954 duly sanctioned by the Commander Headquarters 31 Artillery Brigade, and no exception can be taken thereto. He further submits that at the time of discharge, the petitioner was paid the amounts of Armed Forces Personnel Provident Fund and Army Group Insurance Fund Maturity benefit and discharged him from service. He further submits that since the petitioner has not completed minimum 15 years of service, which is mandatory to earn service pension, and since he has completed only 5 years of service as on the date of his discharge, and he having been discharged from service on the ground of being an inefficient soldier under item III (v) of table annexed to Rule 13 (3) of Army Rules 1954, he is not entitled for any pensionary benefits. He submits that the petitioner was discharged from service as far as back as in the year 1985, and he, having kept quiet all these years, filed the present writ petition after lapse of nearly 21 long years, and therefore, the writ petition is not maintainable and the same is liable to be dismissed on the ground of

laches.

Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the material on record.

A perusal of the record would show that the respondents, before passing the discharge order, issued a show cause notice dated 27.10.1985 calling upon the petitioner to explain as to why his services should not be terminated as he had failed to achieve permanent qualification of Army Certificate of Education Class-III within the period of five years from the date of his enrolment. The petitioner submitted his explanation stating that even though he did not achieve the requisite military qualification, he may be retained in service. As the petitioner did not achieve the requisite military qualification, the respondents discharged the petitioner from service with effect from 04.11.1985 being an inefficient soldier under item III (v) of table annexed to Rule 13 (3) of Army Rules, 1954 duly sanctioned by the Commander Headquarters 31 Artillery Brigade. Therefore, the contention of the petitioner that he was discharged from service in violation of the principles of natural justice without issuing any show cause notice and without providing him any opportunity cannot be accepted. That apart, at the time of discharge, the petitioner was paid an amount of Rs.1,004/- towards Armed Forces Personnel Provident Fund balance and Rs.3,552/- towards Army Group Insurance Fund Maturity Benefits and discharged him from service under

item III (v) of table annexed to Rule 13 (3) of Army Rules, 1954. The petitioner, having accepted his discharge, never questioned the same and kept quiet all these years. Now the petitioner, after a lapse of nearly 21 long years, approached this Court and filed the present writ petition seeking pensionary benefits, which is liable to be dismissed on the ground of laches.

According to the respondents, as per the Army Pension Regulations, minimum 15 years of service is mandatory to earn service

pension. This fact is admitted by the petitioner, and it is his admitted case that he has completed only five years of service as on the date of his discharge. Since the petitioner has completed only 5 years of service as on the date of his discharge, and he having been discharged from service on the ground that he is an inefficient soldier under item III (v) of table annexed to Rule 13 (3) of Army Rules 1954, he is not entitled for any pensionary benefits, and as such, no exception can be taken to the action of the respondents in passing the impugned order, rejecting to grant him service pension.

The writ petition is devoid of merit and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J.

Date: 03.09.2007
Nsr